IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3681 of 2001
With
FIRST APPEAL No. 1393 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD TRANSPOSED AS OPONNET NO. 1 & 2 - Appellant(s)
Versus
RAMESHCHANDRA JETHALAL PATEL 5743, S WILSON STREET TEMP, & 4 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1 - 3.MR VIBHUTI NANAVATI for Appellant(s) : 2 - 3.MR ARVINDKUMAR SHAH for Appellant(s) : 2 - 3.
RULE SERVED BY DS for Defendant(s) : 1, 3,
MR H.S.MULIA for Defendant(s) : 1 - 2.
MR HM BHAGAT for Defendant(s) : 4,
MS MEGHA JANI for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 12/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the judgment and decree passed in Motor Accidents Claims Petition No. 1690/92 dated 31.1.2000 by the Motor Accidents Claims Tribunal (Aux.), Ahmedabad (Rural) at Mirzapur, the aforesaid two appeals have been filed. As both the appeals arise from the same judgment, for the sake of convenience and at the request of the learned advocates appearing for the parties, both the appeals were heard together and are decided by this common judgment.

2. First Appeal No. 3681/2001 has been filed by the owners of the vehicle, whereas First Appeal No. 1393/2000 has been filed by Oriental Insurance Co. Ltd., one of the insurance companies which has been saddled with the liability to make payment of compensation. By virtue of the impugned judgment, the Tribunal has awarded Rs. 27,56,000/- to the claimants in MACP No. 1690/92.

3. The circumstances in which the aforesaid Motor Accidents Claims Petition had arisen, in a nutshell, are as under:

3.1 Along with the deceased, the claimants - parents of deceased Gauri @ Goldi Ramchandra Patel, were travelling in a matador bearing Regn. No. GQE-4796 on

9.6.1992. Around 4.30 a.m. the said matador collided with a truck bearing Regn. No. NS-09-A-6732 near the temple of Lord Shiv, near Gota. Because of the said accident, the matador in which the deceased was travelling turned turtle. The deceased and others suffered injuries and ultimately the deceased succumbed to the injuries.

4. Learned advocate Shri Vibhuti Nanavati has appeared for the owners of the vehicle, whereas learned advocate Shri Mulia has appeared for respondents Nos. 1 and 2, i.e. the original claimants, and learned advocate Shri B.H. Bhagat has appeared for respondent No. 4 insurance company and learned advocate Ms. Megha Jani has appeared for respondent No. 5-Insurance Company in First Appeal No. 3681/2001.

5. Learned advocate Shri Nanavati appearing for the owners of the vehicles in First Appeal No. 3681/2001 and insurance company in First Appeal No. 1393/2000 has fairly submitted that so far as the finding with regard to negligence of the drivers is concerned, he has not to make any submission, but he has challenged validity of the judgment only so far as quantum of compensation awarded by the Tribunal to the claimants is concerned.

6. In the aforesaid circumstances, the facts giving rise to the accident and the details with regard to negligence of the drivers have not been discussed at all in this judgment, and as the arguments were confined only to the quantum of compensation awarded

by the Tribunal, the relevant details with regard to compensation only have been discussed.

7. The deceased was an American citizen, who was born on 3.1.1976 as per the birth certificate (Exh. 200), and the accident had taken place on 9.6.1992. At the time of the accident she was 16 years old. The Tribunal has awarded Rs. 27,56,000/- to the claimants – parents of the deceased - on the basis of calculation that future income of the deceased would have been $1200 per month and the dependency benefit of $400 would have been made a available to the claimants per month and looking to the age of the deceased and her parents, multiplier of 15 was considered and thus, the dependency benefit was worked out to $72,000. For the purpose of conversion of US$ into Indian Rs., exchange rate was considered at Rs. 38 per $ and accordingly the amount of compensation was converted into Rs. Thus, on the above basis, Rs. 27,36,000/- have been awarded and for loss of expectation of life a further sum of Rs. 20,000/- was added to the compensation. Thus, in all, Rs. 27,56,000/- have been awarded as compensation.

8. Learned advocate Shri Vibhuti Nanavati appearing for the appellant in First Appeal No. 3681/2001 has submitted that the amount of income estimated and the multiplier adopted by the Tribunal are on much higher side. He has also submitted that the deceased, being an unmarried girl aged 16 years, the amount of dependency benefit should have been taken at much less than the amount determined by the Tribunal and

even the rate of exchange taken into account by the Tribunal is on a higher side.

9. While elaborating his submissions, learned advocate Shri Nanavati has submitted that though it was submitted before the Tribunal that the deceased was doing a part-time job in US and was earning $300 a month, there was no evidence to that effect. Only a document, which had not been proved (Mark 150/2), had been considered by the trial court. It has been submitted by him that only on the basis of a submission made on behalf of the claimants that the deceased wanted to become a physician – a doctor, the Tribunal had presumed that had she not expired, she would have earned $1200 a month. It has been submitted by the learned advocate that uncertainties of life had not been considered by the Tribunal. The Tribunal had presumed that the deceased would not have married simply because the claimants had submitted that the deceased never wanted to marry and wanted to stay with her parents. All submissions were based on preponderance of probabilities. According to him, most of the girls would invariably marry after attaining marriageable age and it was also not certain whether she would have become a doctor because, looking to the financial condition of the parents, possibly, she could not have become a doctor as medial education is quite expensive even in the U.S. It has been, therefore, submitted that the income estimated by the Tribunal is on a much higher side.

10. Thereafter it has been submitted by the learned

advocate that perhaps by looking to the age of the deceased, the Tribunal adopted a multiplier of 15. According to the learned advocate, the multiplier should have been determined upon considering age of the parents and not the age of the deceased for the reason that the claimants were quite aged and they would not have survived for long period to enjoy the income which would have been earned by the deceased. Multiplier of 15 was adopted probably because the deceased was aged just 16. The claimants, i.e., the parents of the deceased, were in the age group of 40-45 and, therefore, looking to the said fact, multiplier applied should not have been more than 8.

11. Thereafter it has been submitted that while converting $ into Rs., the Tribunal had considered average currency rate for US$1 to Rs., i.e., the average exchange rate for the period of 8 years commencing from the date of accident till the date of the award was considered. It has been submitted by the learned advocate that looking to the law laid down by the Hon'ble Supreme Court in the case of **United India Insurance Co. Ltd. and others. v. Patricia Jean Majahan and others**, 2002(6) SCC 281, the rate of exchange prevailing as on the date of accident should have been considered and according to the learned advocate, the rate of exchange prevailing as on the date of accident, that is, as on 9.6.1992, was $1=Rs. 30.60 as per Exh. 208, a certificate given by a banker. Moreover, relying upon the aforesaid judgment, it has been also submitted by him that in case of compensation, which is to be awarded in respect of an accident of a non-

resident Indian, the Tribunal has not to look at the income in foreign currency, but the compensation should be awarded by considering background of Indian conditions and it may not be awarded in the background of foreign conditions. Thus, the court has to strike a balance by awarding reasonable amount of compensation.

12. On the other hand, learned advocate Shri Mulia appearing for the original claimants has submitted that the impugned order passed by the Tribunal is just, legal and proper. He has submitted that multiplier of 15 adopted by the Tribunal cannot be said to be on higher side looking to the age of the deceased as well as her parents. He has also submitted that the Tribunal has rightly assessed the amount of compensation by considering the fact that the deceased had an excellent academic career and she was also engaged in several extra-curricular activities. In view of the said fact, she had excellent prospects for earning more future income and, therefore, the order passed by the Tribunal should not be disturbed.

13. We have heard the learned advocates and have also gone through the evidence adduced before the Tribunal.

14. Upon taking an overall view of the evidence led before the Tribunal and looking to the relevant legal provisions, in our opinion, the amount of compensation awarded to the respondents-claimants can be said to be on a higher side.

15. So far as the rate of exchange is concerned, in our opinion, the Tribunal has committed an error by taking exchange rate of Rs. 38.00 per $ by considering average currency rate for US$ to Indian Rs. during the period of 8 years commencing from the date of the accident till the date on which the award was declared.

16. Looking to the law laid down by the Hon'ble Supreme Court in the case of United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others (supra), the rate of exchange in such case should be the rate of exchange prevailing as on the date on which the accident takes place. In this case, the accident had taken place on 9.6.1992 and looking to Exh. 208, a certificate given by a banker, US$1 was equivalent to Rs. 30.60 on 9.6.1992. In the aforesaid circumstances, we modify the award by directing that for the purpose of determining exchange rate, US$1 should be treated as Rs. 30.60.

17. It was deposed on behalf of the claimants that the deceased wanted to become a doctor and had decided not to marry for her whole life and, therefore, probable future income of the deceased would have been at least $10,000 per month.

18. In our opinion, the claim made was on much higher side. There are several probabilities and uncertainties and we do not think that the claim suggested by the claimants can ever be accepted to such an extent. After considering the case of **United India Insurance Co. Ltd**. (supra), the Tribunal

has considered that the deceased would have earned at least $800 a month if she was in a full time job and by taking into account the future prospects of the deceased, the Tribunal has considered $1200 per month as probable future income of the deceased. Out of the said amount, the Tribunal has deducted 2/3rd of the income towards her personal expenses and thereby dependency benefit to the extent of $400 per month, that is, $ 4800 per annum, was determined. In our opinion, the said amount is quite improbable and unacceptable in Indian conditions. Looking to the probabilities, in our opinion, it would be just and proper to consider $900 per month to be the future income of the deceased, and upon deducting 2/3rd of the income towards her personal expenses, the Tribunal should have awarded dependency benefit of $300 per month, i.e., $3600 per annum. We take into account the fact that the deceased was a non-resident Indian. The Hon'ble Supreme Court has held in the case of **United India Insurance Co. Ltd** (supra) that in the background of Indian conditions, amount of dependency calculated on the basis of deceased's income in US dollars would be fabulous and therefore a balance has to be struck to arrive at a reasonable and fair mean. Therefore, looking to the ratio of the aforesaid judgment, looking to the Indian conditions, in our opinion, the dependency should have been determined at the rate of $3600 per annum as shown above because the Tribunal should not have considered income of the deceased on the basis of standard of living and earnings in the US while determining compensation to be paid to the dependents. We are, therefore, of the view that the

dependency should be estimated at $3600 per annum.

19. So far as the multiplier is concerned, in our opinion, multiplier of 15 adopted by the Tribunal on the basis of age of the deceased at 16 years is not correct. In a case where the deceased was an unmarried girl aged 16 having parents in the age group of 40-45 years, in our opinion, deciding multiplier on the basis of age of the deceased is not proper. The Tribunal ought to have considered the multiplier after taking into account age of the dependents and in our opinion, it would be just and fair if multiplier of 10 is adopted for the purpose of calculating the amount of compensation looking to the ages of dependants.

20. Thus, in our opinion, the amount of compensation awarded by the Tribunal is much higher than what should have been actually awarded to the claimants. In our opinion, dependency benefit should be estimated at $3600 per annum as per calculations hereinabove. Multiplier 10 should be applied instead of 15 and rate of exchange should be considered at the rate of $1=Rs. 30.60 per for the reasons hereinabove.

21. So far as loss of expectancy of life is concerned, in our opinion, the amount of Rs. 20,000 awarded by the Tribunal is just and proper and, therefore, we do not wish to make any change therein. Even the rate of interest awarded by the Tribunal, which is 12%, appears to be quite reasonable and, therefore, we do not make any change therein.

22. For the reasons stated hereinabove, both the appeals are allowed with no order as to costs.

22.1 The amount of dependency benefit as determined hereinabove shall be $300 per month i.e. $3,600/- per annum. Multiplier being 10, the total amount of dependency benefit shall come to $36,000/- and the said amount shall be converted into rupees @ $1=Rs. 30.60, which comes to Rs. 11,01,600/-. The amount paid under the head 'loss of expectation of life' shall remain the same i.e. Rs. 20,000/- and, thus, the total amount of compensation works out to Rs. 11,21,600/-, which shall be paid to the original claimants alongwith interest @ 12% as determined by the Tribunal.

Decree to be drawn accordingly. The excess amount of deposit made by the insurance company with the Tribunal shall be returned to the insurance company forthwith.

(Anil R. Dave, J.)

(H.B. Antani, J.)

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